

ORDINANCE No.

118627*Law Department*

COUNCIL BILL No.

111537

INDEXED

The City of Seattle

AN ORDINANCE relating to Sand Point; authorizing the Director of the Office of Management & Planning to enter into a sublease with the Board of Regents of the University of Washington for the renovation and use and occupancy of a certain building at the Naval Station Puget Sound at Sand Point.

RE

Honorable President:

*Parks Comm. Hee*  
*4-2 Passed*

Your Committee on

to which was referred the within Council Bill No. report that we have considered the same and

COMPTROLLER FILE No.

Introduced:	NOV 12 1996	By:	DONALDSON
Referred:	NOV 12 1996	To:	PARKS, PUBLIC GROUNDS AND RECREATION COMMITTEE
Referred:		To:	
Referred:		To:	
Reported:	JUN 16 1997	Second Reading:	JUN 16 1997
Third Reading:	JUN 16 1997	Signed:	JUN 16 1997
Presented to Mayor:	JUN 17 1997	Approved:	JUN 18 1997
Returned to City Clerk:	JUN 18 1997	Published:	<i>File app. OK</i>
Vetoed by Mayor:		Veto Published:	
Passed over Veto:		Veto Sustained:	

*Full Council Vote 7-*

*Law Department*

INDEXED

# The City of Seattle--Legislative Department

Date Reported  
and Adopted

## REPORT OF COMMITTEE

Honorable President:

*Parks Committee 6-11-97*

Your Committee on

*7-2 Passed*

to which was referred the within Council Bill No.

report that we have considered the same and respectfully recommend that the same:

*full Council vote 7-2 Chong, Noland*

Committee Chair

ORDINANCE 118627

AN ORDINANCE relating to Sand Point; authorizing the Director of the Office of Management & Planning to enter into a sublease with the Board of Regents of the University of Washington for the renovation and use and occupancy of a certain building at the Naval Station Puget Sound at Sand Point.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of the Office of Management and Planning is hereby authorized to execute and deliver, on behalf of The City of Seattle, a sublease with the Board of Regents of the University of Washington substantially in the form of the agreement attached hereto and identified as Exhibit "A", for the renovation of building 5 at the Naval Station Puget Sound at Sand Point, and its subsequent use and occupancy.

Section 2. The Director of the Office of Management & Planning is further authorized to execute on behalf of the City a memorandum of sublease to be filed in the Office of the King County Recorder indicating that said sublease is available for viewing at the Office of the City Clerk of the City of Seattle.

Section 3. Any act consistent with and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

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1 Passed by the City Council the 16 day of June, 1996<sup>7</sup>, and signed by me in open  
2 session in authentication of its passage this 16 day of June, 1996<sup>7</sup> *ll*

3  
4 *Jan Drago*  
5

President \_\_\_\_\_ of the City Council

6 Approved by me this 18 day of June, 1996<sup>7</sup> *ll*

7  
8 *Norman Bruce*  
9 Mayor

10 Filed by me this 18 day of June, 1996<sup>7</sup>.

11  
12 *Janice E. Lipp*  
13

City Clerk

14 (SEAL)  
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**SUBLEASE AND ACCESS AGREEMENT**

**Between**

**The City of Seattle**

**and**

**The Board of Regents of the University of Washington**

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4/29/97

1. DEFINITIONS.....	4
2. PREMISES.....	5
3. USE/PURPOSE.....	5
4. TERM.....	5
5. EFFECTUATION OF AGREEMENT.....	5
6. POSSESSION AND OCCUPANCY.....	6
7. PAYMENT IN LIEU OF RENT.....	6
8. TAXES, UTILITIES AND SERVICES.....	6
9. CONDITION OF THE PREMISES.....	7
10. MAINTENANCE AND REPAIR SERVICES.....	8
11. INSTALLATIONS, ALTERATIONS, AND REMOVALS.....	10
12. RENOVATION AND CONSTRUCTION WORK.....	10
13. HISTORIC PRESERVATION.....	11
14. COOPERATION WITH SAND POINT COMMITTEE.....	11
15. RULES AND REGULATIONS.....	12
16. ENVIRONMENTAL PROTECTION.....	12
17. DAMAGE OR DESTRUCTION.....	13
18. MANAGEMENT AND OPERATION.....	13
19. COMPLIANCE WITH LAW.....	14
20. ACQUISITION OF FEE TITLE BY CITY.....	15
21. LIENS.....	15
22. LEGAL LIABILITY.....	15
23. INSURANCE AND BONDS.....	16
24. DEFAULT AND TERMINATION.....	18
25. SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS OF WAY.....	19
26. RIGHTS RESERVED BY CITY.....	19
27. SUBLEASES AND ASSIGNMENTS.....	20
28. SURRENDER.....	20

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE  
IT IS DUE TO THE QUALITY OF THE DOCUMENT.

29. CITY'S CONSENT OR APPROVAL.....	21
30. RELATIONSHIP.....	21
31. AMENDMENTS.....	21
32. NO WAIVER OF DEFAULT.....	21
33. BINDING EFFECT.....	21
34. NEGOTIATED AGREEMENT.....	22
35. NOTICE.....	22
36. CAPTIONS.....	22
37. INVALIDITY OF PROVISIONS.....	22
38. APPLICABLE LAW.....	22
39. AGREEMENT CONTENTS.....	23
40. RECORDING OF AGREEMENT.....	23

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## **SUBLEASE AND ACCESS AGREEMENT**

**Between**

**The City of Seattle**

**and**

**Board of Regents of the University of Washington**

This Sublease is made this \_\_\_ day of \_\_\_\_\_, 1997, by and between The City of Seattle, a municipal corporation of the State of Washington ("City"), acting through its Director of the Office of Management and Planning ("Director"), and the Board of Regents of the University of Washington, an agency of the State of Washington ("University").

### **RECITALS**

WHEREAS, the United States Navy identified the Naval Station Puget Sound at Sand Point ("Sand Point") for closure in 1991, and requested that the City sponsor a local reuse planning effort to determine how said property should be reused; and

WHEREAS, the Seattle City Council adopted the Community Preferred Reuse Plan for Sand Point in November of 1993, which contemplates transfer of the property to the City, the National Oceanographic and Atmospheric Administration and the United States Biological Service; and

WHEREAS, the City is in the process of applying to the United States government to secure title to certain of the Sand Point properties; and

WHEREAS, the University is qualified and willing to sublease, rehabilitate and improve a portion of the premises within Sand Point to provide storage for various University activities and such other uses as may be consistent with the Master Lease between the City and the United States Navy, any Sand Point Amendments to the City's Comprehensive Plan and the Sand Point Physical Development Plan; and

WHEREAS, the City and the University recognize that the utilities and other infrastructure elements serving Sand Point require upgrading and the University agrees to contribute to the costs of such upgrades; and

WHEREAS, the City and the University recognize that the University's use of the premises must be coordinated with other uses of Sand Point and must comply with the terms and conditions of the Master Lease between the City and the United States Navy; and

WHEREAS, the City and the University also recognize that if the subleased portions of Sand Point are transferred to the City during the term of this Sublease, the University's use of the premises must comply with any deed restrictions or other legal requirements imposed by the United States pursuant to such transfer.

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NOW, THEREFORE, in consideration of the terms, covenants, and conditions hereinafter set forth, the City and the University as hereby agree as follows:

**1. DEFINITIONS.**

In addition to terms defined elsewhere in this Sublease, the following capitalized terms shall have the following meanings unless the context otherwise requires:

"Access Property" means the real property to be used by the University for ingress and egress to the Building.

"Codes" include all land use, building, housing, fire, electrical, mechanical, plumbing and other codes applicable under City ordinances or State law, and all interpretations thereof issued by the agencies responsible for the administration thereof.

"Effective Date" means the date when all conditions contained in Article 5 of this Sublease have been satisfied.

"Infrastructure Upgrades" means improvements to the water, sewer and electrical systems on the portion of the Sand Point controlled by the City.

"Management Costs" means all costs incurred by the City, or by such other entity as may be designated by the City, to perform overall management functions, including grounds maintenance and security services, for the portion of the Sand Point controlled by the City.

"Master Lease" means the lease of a portion of Sand Point between the United States of America and The City of Seattle, dated July 5, 1996, as amended.

"Personal Property" means all personal property on the Premises at the inception of this Sublease; and all replacements or substitutions therefor.

"Premises" means the Building, Access Property and parking described in Article 2.

"Renovation" means the rehabilitation and modification of the Building subject to this Sublease as depicted in construction documents approved by the City.

"Site Improvements" means improvements made by the City to the portion of the Sand Point controlled by it, including streets, sidewalks, landscaping, signs and lighting.

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## **2. PREMISES.**

- 2.1. Subject to the terms and conditions set forth herein and in the Master Lease and all exhibits and attachments thereto, a copy of which is attached hereto as Exhibit C and incorporated herein by reference, the City subleases to the District the building depicted as number 5D on the attached Exhibit A ("the Building"), and legally described on Exhibit B, which is hereby incorporated by reference.
- 2.2. Accessory to the Sublease and coextensive with its duration, the City grants the University a non-exclusive easement across the real property depicted on Exhibit A ("Access Property") for purposes of ingress and egress to and from the Building.
- 2.3. In addition, for the duration of the Sublease, the University shall have the right to use ten parking spaces located generally in the areas depicted on Exhibit A. Said spaces shall be available to the University during the hours of 6 a.m. through 5 p.m., Monday through Friday.

## **3. USE/PURPOSE.**

In the absence of prior written approval by the City and the United States, the Building shall be used as a storage facility or for such other uses as may be consistent with the Master Lease between the City and the United States Navy, any Sand Point Amendments to the City's Comprehensive Plan and the Sand Point Physical Development Plan. The City shall have the right to terminate this Sublease by written notice to the University if the Building ceases to be used for the purposes identified in this Article.

## **4. TERM.**

This Sublease shall commence upon satisfaction of the conditions precedent set forth in Article 5, and shall terminate June 30, 2006, unless sooner terminated as provided herein. In addition, this Sublease shall terminate immediately upon termination of the Master Lease.

## **5. EFFECTUATION OF AGREEMENT.**

This Sublease shall not become effective until all of the following conditions have been satisfied:

- (a) the United States Department of the Navy has approved this Sublease in writing, as required under paragraph 27 of the Master Lease;
- (b) the Sublease has been signed by an authorized official of the University and returned to the Director of the Office of Management and Planning ("Director") at the address set forth below, accompanied by the required certificates of insurance or certificates of self-insurance; and
- (c) the Sublease has been signed by the Director pursuant to ordinance authority.

The City shall notify the University in writing when all conditions precedent have been satisfied. Such notice shall expressly state the Effective Date of this Sublease.

## **6. POSSESSION AND OCCUPANCY.**

Upon the Effective Date of this Sublease, the University shall have possession of and may construct improvements to the Building, subject to the rights reserved by the City herein; provided, that the Building shall not be occupied until a Certificate of Occupancy has been obtained by the University and the Director has approved such occupancy. The Director's approval shall not be unreasonably withheld or delayed.

## **7. PAYMENT IN LIEU OF RENT.**

- 7.1. Rental Equivalent: In lieu of rent, the University shall pay the City on the dates set forth below \$268,596 annually for Infrastructure Upgrades, Site Improvements and Management Costs.
- 7.2. Time and Manner of Payment: The rental equivalent shall be due and payable by the University to the City on the Effective Date of this Sublease for 1997, and on February 1 of each subsequent year of the Sublease. All payments shall be by check, money order, or wire transfer, payable to the City, and shall be sent in care of the Director at the address shown in Article 35 or as otherwise directed by the City's Finance Director.
- 7.3. No Prepayment Penalty: The University shall have the right to prepay all or any portion of the rental equivalent.

## **8. TAXES, UTILITIES AND SERVICES.**

- 8.1. Taxes: The University shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Premises.
- 8.2. Utility Charges: The University, at its sole expense, shall install meters for water, sewer, electricity, gas (if available) and other utilities, as necessary, and shall pay before delinquency all costs for utilities and other services provided on or to the Premises, including but not limited to, elevator service, electricity, gas, water, telephone, sewer, garbage, heating, janitorial, security, and litter removal. In the event the University requires additional utility installations and/or modifications of existing installations within or in the immediate area of any of the Building, including new connections to water or sewer mains required in connection with the construction, rehabilitation, modification or use thereof as contemplated by this Sublease, such installation and/or modification shall be paid for solely by the University. The City shall not be liable for any injury, loss or damage caused by or resulting from any interruption or failure of utility services due to any causes whatsoever, nor shall the University be entitled to an offset, reduction, or return of rental as a result of any interruption or failure of said services.

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8.3. No Charges for Service to Other Property. Nothing contained herein shall require the University to pay any charge for utility service furnished to those portions of Sand Point controlled by the City and not subject to this Sublease.

8.4. The University's Right To Contest. The University shall have the right to contest or review by legal proceedings or in such other manner as may be legal, any tax, assessment, utility charge or other governmental imposition and to pay such items under protest; provided, that nothing in this Section shall be construed to restrain the exercise of any remedy by any City utility for nonpayment, and provided further that notwithstanding any protest or challenge the University shall timely pay such amounts as are necessary to avoid interruption in service, including any interruption that would occur from application of the normal policy or procedure of any City utility.

## 9. **CONDITION OF THE PREMISES.**

Subsequent to the execution of this Sublease but prior to use and occupancy of the Premises by the University or any sublessee, a joint inspection of the Premises shall be conducted by representatives of the University and the City, and a complete inventory of the related Personal Property located therein shall be made. A report shall be made of the condition of the Premises and related Personal Property, and any deficiencies which are found to exist will be noted in such report (the "Joint Inspection Report"). Each inventory prepared for the Joint Inspection Report, upon completion, shall be identified by building number. The Joint Inspection Report shall be signed and dated by both parties to this Sublease and inserted as Exhibit D to this Sublease without the need for amendment or further legislative action. If, upon commencing occupancy of the Premises, the University detects a material difference in the condition of the Premises or a material discrepancy from the inventory, the University may so notify the City in writing. At the termination of this Sublease, the University shall turn over to the City the Subleased Premises in the same condition in which they were received, reasonable wear and tear excepted. Any significant variances from the original Joint Inspection Report shall be clearly documented. The close-out report will constitute the basis for settlement by the parties for any of the Premises shown to be lost, damaged or destroyed.

All facilities and property comprising the Premises are available "as is, where is," and as such the City makes no warranty, express or implied, regarding such facilities and property either as to their suitability generally or as to their fitness for any particular purpose. The University has examined, knows, and accepts the condition and state of repair of the Premises and acknowledges that the City has made no representation concerning such condition and state of repair nor any agreement or promise to alter, improve, adapt, repair, or keep in repair the same, or any item thereof, which has not been fully set forth in this Sublease, which contains all the agreements made and entered into between the University and the City with respect to the Premises.

Without limiting the generality of the foregoing paragraph, the University agrees that, except as may be specifically set forth in this Sublease, neither the City nor any person for whom the City may have any responsibility makes any representation, warranty or promise of any kind with regard to any of the following: (a) the physical condition of the Premises or improvements (land, buildings, fixtures, or infrastructure), whether or not readily determined by inspection; (b) the presence or

absence of any underground tanks or any hazardous or defective substances or conditions on or about the Premises, or on adjacent properties; (c) the history of the Premises or activities that may have occurred or been conducted thereon or thereunder; (d) soils conditions or drainage; (e) square footage of land or buildings; (f) encroachments; or (g) location or condition of utility lines.

The University acknowledges that the Building may not be fit for occupancy for the purposes intended, or in some cases for any purpose, without rehabilitation and modifications. The University further acknowledges that the Building may not be in compliance with applicable codes and may not satisfy standards of various potential funding sources for operation thereof. The University agrees that the City has no obligation to cause the Building to comply with any such Codes or standards, and that if the University fails to bring the Building into compliance, the University and its sublessees will not be permitted to use or occupy such Building for the purposes intended and this Sublease may therefore be terminated.

The University agrees that the City shall have no liability or obligation for, and expressly waives all claims it may at any time have against the City, its officers, employees or agents, a result of any defect or condition of the Premises including, without limitation, latent defects.

#### **10. MAINTENANCE AND REPAIR SERVICES.**

10.1. Maintenance: The University shall keep the Premises, including all related Personal Property contained therein, at all times and at no expense to the City, in good repair and in a neat, clean, safe and sanitary condition, and shall use and maintain the Premises in accord with the laws of the State of Washington, the Charter and ordinances of the City of Seattle, and all applicable Codes, rules and regulations of the Health Officer, Fire Marshal, Director of Construction and Land Use and other appropriate officers of The City of Seattle. In addition, the University shall comply at its sole cost and expense with the maintenance obligations of the City imposed under paragraph 11 of the Master Lease, "Protection and Maintenance," except that the University need not provide grounds maintenance, pest and weed control or fire protection, as set forth in said paragraph 11. The University shall not cause or permit any waste, damage, or injury to the Premises; use or permit on the Premises anything that will increase the rate of fire insurance thereon; maintain anything on the Premises that may be dangerous to life or limb; overload the floors; permit any objectionable noise or odor to escape or to be emitted from said Premises; or permit anything to be done upon said Premises that in any way will tend to create a nuisance.

10.2. City's Maintenance Obligations: During the term of this Sublease, the City shall have no obligation to undertake any repairs, maintenance, or work of any kind except as expressly set forth in this Sublease. However, the City reserves an unqualified right to make repairs or alterations to the Building at any time (a) where conditions deemed by the Director to constitute an emergency exist, (b) in order to correct deficiencies in compliance with any applicable law, regulation or code, or (c) in order to comply with the Master Lease. In the event the need for any such repair or alteration is determined by the Director to have been occasioned by the activities of the University or by any person for whose conduct the University is responsible, or is

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otherwise an obligation of the University under this Sublease, the University shall reimburse the City on demand for all costs incurred in connection with such repairs or alterations.

- 10.3. Books and Records: The University shall keep adequate records and books of account showing costs to it of all items of labor, material, equipment, supplies, services, and other items of cost of any nature constituting an item of actual cost incurred by it directly in the performance of any item of work or service in the nature of repair, restoration, protection and maintenance of the Premises. The University shall provide the City with access to such records and books of account and proper facilities for inspection thereof at all reasonable times.
- 10.4. Contracting for Maintenance and Repairs: The University shall ensure that all contracts and subcontracts for any alterations, maintenance, repairs, and construction activities (including contracts for related professional services) shall be made, entered into, and performed in full compliance with all federal, state and local laws, regulations, ordinances, and the terms of this Sublease and the Master Lease (collectively, "requirements"), whether such contracts are let or made by the University or by a sublessee of the University or other person. The University shall ensure, under all such contracts and subcontracts, that work shall be performed by licensed and qualified contractors, and that wages and benefits shall be paid in compliance with all applicable requirements. The University shall defend, indemnify and hold harmless the City and its officers and employees from any claim, demand, liability, or cost (including attorneys fees) resulting from any failure by the University to ensure compliance as set forth in this Section.
- 10.5. Signs: The University shall not display, inscribe, paint or affix any sign to any part of the Premises without the prior written approval of the City. All proposed signs shall comply with the historic preservation obligations contained in paragraph 10 of the Master Lease.
- 10.6. Keys: Any change in locks shall be at the sole expense of the University. If a lock change is made to the exterior door of any Building, the University shall provide the City with two (2) keys for each lock changed immediately after such change has been completed.
- 10.7. Personal Property: All Personal Property located on the Premises at the commencement of this Sublease shall be maintained and repaired by the University at no cost to the City. On or before the Effective Date of this Sublease the City shall supply the University with an inventory of all such Personal Property, indicating the condition of each piece thereof. With the prior written approval of the Director, the University shall have the right to reassign the Personal Property to other tenants at Sand Point, or to dispose of it pursuant to applicable property surplus laws, rules and regulations.

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## 11. INSTALLATIONS, ALTERATIONS, AND REMOVALS.

- 11.1. Minor Installations and Improvements: During the term of this Sublease the University shall have the right, at its own expense and without the prior written consent of the Director, to install such of its own machinery and equipment, to make such minor improvements and additions, and to attach such removable fixtures in or upon the Premises as may be necessary to conduct its permitted operations, and to remove same at any time prior to the expiration or termination hereof. "Minor Installations and Improvements" shall be defined as ordinary repairs and any non-structural alteration of any portion of the Premises that, together with all other items of the same nature during the calendar year, cost less than \$5,000.00, and emergency repairs immediately necessary for the usual and customary usage of the Premises.
- 11.2. Major Alterations: The University shall not make, or cause to be made, any substantial alteration, addition or improvement to the Premises without first obtaining the written consent of both the Director and the United States Navy as required pursuant to paragraph 17 of the Master Lease. After approval by the United States Navy, the Director's approval of alterations, additions or improvements shall not be unreasonably withheld; provided, however, that before undertaking any such alteration, addition or improvement, the University shall demonstrate to the satisfaction of the Director the availability of sufficient financial resources to complete such proposed alterations, additions or improvements, and provided further that the construction shall be performed in accordance with the requirements of Article 13 of this Sublease and with the plans and guidelines referred to in Section 14.2 hereof. All alterations, additions and improvements made shall be at the sole cost and expense of the University, and unless otherwise agreed in writing by the City, shall remain in and be surrendered with the Premises as a part thereof at the expiration or termination of this Sublease, without disturbance, molestation or injury.

## 12. RENOVATION AND CONSTRUCTION WORK.

- 12.1. Renovation of Building: The University agrees to rehabilitate Building 5D and to obtain all necessary licenses and permits therefor, at its sole expense and consistent with the construction documents approved by the City (the "Renovation") so that the Building shall be suitable for use for the purposes described in Article 3. Prior to the start of the Renovation, the City shall seek on the University's behalf the approval of the United States government as required by paragraph 17 of the Master Lease. No construction shall commence until such time as the City notifies the University that such approval has been obtained. The parties shall cooperate to the maximum extent possible to ensure that the Renovation shall be coordinated with the work of other contractors working at Sand Point; provided, however, that the City shall have final authority over all matters concerning scheduling and coordination of the Renovation.

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- 12.2. Compliance with Codes and Guidelines: All plans and specifications for the Renovation and all actions of the University in connection therewith shall comply with all federal, state and local laws, Codes, regulations, ordinances and permits, and with the plans and guidelines referred to in Article 14.2, to the extent adopted.
- 12.3. City's Right to Stop Work: In the event the City determines that any work being performed upon the Premises is in violation of any Code, does not conform to approved construction drawings, or is otherwise unsafe, it shall so notify the Licensee, in writing, and the Director shall be and hereby is authorized to stop said work, without recourse of any kind, until the matter has been corrected to the Director's satisfaction.
- 12.4. Insurance and Bonds During Renovation: Throughout the period of the Renovation the University shall ensure that the insurance and bonds required by the Master Lease and by Article 23 of this Sublease are maintained in full force and effect, at no cost to the City.

### 13. HISTORIC PRESERVATION.

In undertaking any installation, alteration, modification, repair, renovation or any other work on or to the Premises, the University shall comply with all applicable laws, regulations and ordinances concerning historic preservation, including paragraph 10 of the Master Lease. It shall be the sole responsibility of the University to make timely application for and to obtain, all permits and approvals related to historic preservation in connection with the Renovation and any proposed aesthetic, structural or landscape alterations to the Premises.

### 14. COOPERATION WITH SAND POINT COMMITTEE.

- 14.1. Formation of Sand Point Committee: The University agrees that the City will establish a committee, to include representatives of owners, tenants and users of other portions of Sand Point, as well as representatives of the City and neighborhood interests, to coordinate activities on Sand Point and community involvement therein ("the Committee"). The University shall be entitled to representation on the Committee and shall participate and cooperate in good faith in the processes established by the Committee, including without limitation, the development of a Sand Point parking plan. The University shall keep the Committee informed of proposed activities on the Premises, including without limitation any changes in uses, any construction or rehabilitation activities, changes in sublessees, changes in landscaping, and any changes in rules, policies or procedures that might reasonably affect or concern the tenants or users of other portions of Sand Point or residents in the area.

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- 14.2. Adoption of Plans: Subject to the express terms of this Sublease and to federal, state and local laws and regulations, the University shall comply, and cause its sublessees to comply, with the terms of the following plans for Sand Point from and after the date when such plans have been approved by the City: Construction Management Plan; Transportation Plan; Parking Plan; Site Design Guidelines; Historic Resources Plan; and any amendments to any of the foregoing that shall be approved by the City.

## 15. RULES AND REGULATIONS.

The University agrees to observe, and to cause its sublessees and other persons allowed on the Premises to observe, such reasonable rules and regulations governing the Premises as the City may promulgate from time to time and to comply with all applicable provisions of the Rules and Regulations of the University of Washington and the Washington Administrative Code.

## 16. ENVIRONMENTAL PROTECTION.

The University hereby assumes and agrees to perform all obligations and to undertake all responsibilities, obligations and limitations of the City set forth in paragraphs 12 and 13 of the Master Lease with regard to the Premises, as if such obligations were set forth herein in full. This Sublease is subject to paragraphs 12 and 13 of the Master Lease, which are incorporated herein and are obligations and limitations of the University with regard to the Premises and/or with regard to the acts or omissions of the University. The University shall defend, indemnify and hold harmless the City and its officers and employees from any claim, demand, liability, fine or cost (including attorneys fees) resulting from any failure by the University to comply with obligations or limitations imposed by this paragraph.

The University shall indemnify, hold harmless and defend the City from any costs, expenses, liabilities, fines, or penalties (including attorneys fees) resulting from discharges, emissions, spills, storage or disposal of Hazardous Materials occurring during the term of this Sublease on or from the Premises, or any other action by the University or any sublessee giving rise to City liability, civil or criminal, or responsibility under Federal, state or local environmental laws. This provision shall survive the expiration or termination of this Sublease, and the University's obligations hereunder shall apply whenever the City incurs costs or liabilities for the University's actions.

"Hazardous Substance" means any hazardous, toxic, or dangerous waste, substance or material, including petroleum products, or any contaminant, pollutant or chemical defined or identified in any environmental regulation as posing a potential risk to human health or the environment.

The University understands and agrees that flammable or Hazardous Substances, including explosives, petroleum products, paint, solvents, and resins, are not allowed on the Premises without the express written permission of the City. In the event written permission to store the preceding materials is granted by the City, disposal of such materials shall be in a legal manner by the University.

Prior to initiating any process requiring the use or storage of, or generating, on or adjacent to the leased premises, Hazardous Substances, the University covenants and agrees to obtain the City's

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prior approval. The City may consider approving the specific use, but only after the University demonstrates to the satisfaction of the City that University has all necessary permits for operation and a Hazardous Substances emergency response plan.

The University agrees to cooperate in any environmental audits conducted by the City's staff or independent third parties. The University agrees to provide the City with notice of every governmental inspection of the subleased Premises, notice of violation, and order to clean up contamination, within five (5) days after the receipt thereof by the University. The University agrees to permit the City to participate in all settlement or abatement discussions. In the event the University fails to take remedial measures as stated in any final administrative or judicial order or decree signed by a state, federal, or local regulatory agency within 90 days of such order or decree, the City may elect to perform such work, and the University covenants and agrees to reimburse the City for all direct and indirect costs associated with the City's work.

The University further agrees to retain any and all liabilities arising from the off-site disposal, handling, treatment, storage, or transportation of any Hazardous Substances, including petroleum products, removed from the Premises.

The indemnities, other duties, and obligations provided for in this Article shall survive the expiration or termination of this Sublease.

#### **17. DAMAGE OR DESTRUCTION.**

In the event that the Premises (a) are damaged by fire, earthquake, act of war, or other extraordinary casualty to such an extent as to render them untenable in whole or in substantial part; or (b) are destroyed, the City shall not be obligated to rebuild the Premises nor to compensate the University for any loss occasioned thereby. The University will not be liable for any loss, damage, or destruction of the Premises, except loss, damage, or destruction caused directly by the waste, willful or negligent action of the University, or failure of the University to perform its obligations under this Sublease. The City shall not be obligated to restore the functionality of the Premises in the event of loss, damage, or destruction.

#### **18. MANAGEMENT AND OPERATION.**

- 18.1. Management and Operating Plan: The University shall at all times operate the Premises in compliance with a Management and Operating Plan ("MOP") approved by the Director. The University shall submit a draft MOP to the Director and Committee for review no later than 60 days after execution of this Sublease, but in no event later than the date of occupancy hereunder. The MOP shall contain the elements described in the attached Exhibit E. The University shall make such additions and modifications to the MOP as the Director shall request within 21 days of receipt of such draft, and shall submit its final MOP no later 30 days following a request therefor from the Director. Nothing in the MOP shall modify any of the terms of this Sublease, and in the case of conflict, this Sublease shall be controlling.

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- 18.2. Security: The University shall provide or cause to be provided all security services reasonably necessary to assure security and safety of all students, invitees and licensees to the Premises. The University shall defend, indemnify and hold harmless the City and its officers and employees from any claim, demand, liability, or costs (including attorneys fees) resulting from any failure by the University to comply with this Article.

## 19. COMPLIANCE WITH LAW.

- 19.1. General Requirement: This Sublease shall be construed under and governed by, and the University, at its sole cost and expense, shall comply with, all applicable laws of the United States of America, the State of Washington and the Charter and ordinances of The City of Seattle, as well as all Codes, rules and regulations of any such governmental entity including environmental, occupational safety and health, and coastal, and all requirements associated with any funding source for the improvement of, or operations on, the Premises. The University shall not knowingly permit any illegal activity according to federal, state and local statutes and ordinances shall be allowed within the confines of the Premises.
- 19.2. Licenses and Similar Authorizations: The University, at no expense to the City, shall secure and maintain in full force and effect during the term of this Sublease, all necessary licenses, permits, regulatory approvals and similar legal authorizations required for the operation, use and development of the Premises, from all relevant authorities, including without limitation any permits from the City's Department of Construction and Land Use, and shall comply with all requirements thereof. Nothing herein shall be construed as assurance that any such approvals will be granted or that the City, as the City, will grant consents, approvals or modifications hereunder for the purpose of compliance with the conditions of any permit, approval, license or funding agreement sought or obtained by the University.
- 19.3. Equal Employment Opportunity and Nondiscrimination: The University shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States and the State of Washington, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.
- 19.4. Women's & Minority Business Enterprise Utilization: The terms and conditions of this Sublease shall be administered by the University consistent with the University's policies regarding women's and minority business enterprises.
- 19.5. Lead-Based Paint: The University shall comply with all requirements of applicable laws and regulations with regard to use and disposal of lead-based paint. Without limiting the foregoing, the University shall comply with all provisions contained in 24 CFR Part 35, including regulations promulgated at 61 Federal Register 9063 *et seq.*, with regard to disclosure of information concerning lead-based paint.

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## 20. ACQUISITION OF FEE TITLE BY CITY.

In the event the City acquires fee title to any portion of the Premises during the Term of this Sublease, the Sublease shall, without the necessity for further action by the parties, be converted into a lease and shall continue in full force and effect. The University agrees that such lease shall be subject to and that it will comply with, all deed or other restrictions which may be imposed by the United States in connection with such conveyance.

## 21. LIENS.

If, because of any act or omission of the University or any of its sublessees, any mechanic or other lien or order for payment of money shall be filed against the Premises or the improvements, the University shall at its sole expense cause the same to be discharged or bonded within thirty (30) days after the date on which such lien or order becomes known to the City or to the University.

## 22. LEGAL LIABILITY.

- 22.1. Indemnification: In addition to the requirements contained in Paragraph 16 of this Sublease, the University covenants that it will indemnify and hold the City harmless from all losses, claims, actions, damages and expenses arising or that may arise in the future out of or resulting from any act or omission of the University in connection with its use or occupancy of the Premises. In the event that any suit based upon such losses, claims, actions, damages, or expenses is brought against the City, the University, upon notice of the commencement thereof, shall defend the same at the University's sole cost and expense (provided that the City shall have the right to appear in and defend any such action by its own counsel at its own expense), and if final judgment be adverse to the City, or the City and the University jointly, the University shall promptly satisfy the same.

To the extent that RCW 4.24.115 (or successor provision) applies, (a) this indemnity shall not apply in case of any liability for damages arising out of bodily injury to persons or damage to property caused or resulting from the sole negligence of the City, its agents or employees, and (b) in case of liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (i) City or its agents or employees, and (ii) the University or its agents or employees, this indemnity shall apply only to the extent of the University's negligence.

The University shall require its contractors, subcontractors or sublessees to indemnify the City to the same extent as indemnification is provided by them to the University and to waive, as to the City, their immunity under Title 51 RCW with regard to claims of employees of contractors, subcontractors or sublessees for injuries suffered at the Premises.

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Any liability of the University hereunder for acts or omissions occurring during the term of this Sublease, or arising under any indemnity provision of this Sublease, shall survive termination and surrender (whether or not any claim giving rise to such liability shall have accrued).

- 22.2. Waiver and Release: The University agrees that it is responsible for identifying and complying with applicable regulatory requirements, including but not limited to the Seattle Municipal Code, the Shoreline Management Act, and the State Environmental Policy Act. In the event of any administrative or legal challenge to this Sublease or to the uses or development authorized by this Sublease, including any regulatory permits required for such use or development, the University waives any cause of action for damages against the City arising from the application or administration of applicable laws. In addition, except as otherwise expressly provided in this Sublease, the University hereby irrevocably releases and waives all claims that the University has or may have hereafter against City with respect to the condition of the Premises or arising pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or the Washington State Model Toxics Control Act, as amended.
- 22.3. Assumption of Risk: The placement and storage of personal property on the Premises shall be the responsibility, and at the sole risk, of the University.

## 23. INSURANCE AND BONDS.

- 23.1. University Liability: The University is self-insured for liability purposes. The University shall in any event, and without prejudice to any other rights of the City, bear all risk of loss or damage to the Premises (ordinary wear and tear excepted), including the related personal property, occupied or used by the University or any of its sublessees, arising from any causes except the activities of the City or its agents, contractors, subcontractors, employees or licensees, or in any manner caused by the occupation or use of the Premises by the University or any sublessees, or by a risk customarily covered by insurance in the locality in which the Premises are situated, even when such loss or damage stems from causes beyond the University's control. As to portions of the Premises, including the related personal property, which remain unoccupied or unused, the University shall only be liable for loss or damage arising out of the University's occupation or use of other portions of the Premises. In the event any item or part of the Premises, including the related personal property, shall require repair, rebuilding, or replacement resulting from loss or damage, the risk of which is assumed under this section, the University shall promptly give notice thereof to the City and shall, if so demanded by the City, upon termination of this Sublease either compensate the City for such loss or damage, or rebuild, replace or repair the item or items of the Premises, including the related personal property, so lost or damaged. For the purposes of this subparagraph, modifications of the Premises approved by the City will not be considered damage.

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23.2. The University's Contractor's and Sublessee's Insurance: During the entire period of this Sublease, the University shall require its contractors and sublessees or any contractor performing work on the Premises to carry and maintain the insurance required below:

(a) Comprehensive general liability insurance, including but not limited to, contractor's liability coverage and contractual liability coverage written on an insurance industry standard form (CG 00 01), of not less than \$1,000,000 per occurrence and not less than \$2,000,000 general aggregate with respect to personal injury or death, and with respect to property damage.

(b) A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent. Such policy or policies must provide the following minimum limit: Bodily Injury and Property Damage, \$ 1,000,000 per accident

(c) Workers' Compensation or similar insurance in form and amounts required by law.

(d) A policy of Pollution Liability providing coverage for claims involving involve remediation, disposal or other handling of pollutants arising out of operations of the University or its sublessees or their respective contractors and subcontractors on or about the Premises; for claims arising from the transportation of hazardous materials; and for claims involving remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos with limits of not less than \$1,000,000 per occurrence.

23.3. Policy Provisions: All insurance which this Sublease requires the University to carry and maintain or cause to be carried or maintained shall be in such form, and in such amounts, for such periods of time, and with such insurers as the City may reasonably require or approve. All policies or certificates issued by the respective insurers for public liability and all-risk property insurance will name the City and United States as additional insureds, provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the University or the City or any other person, provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least forty-five (45) days after receipt by the City of written notice thereof, provide that the insurer shall have no right of subrogation against the City, provide that such insurance shall be primary and noncontributory, and be reasonably satisfactory to the City in all other respects. In no circumstances will the University be entitled to assign any third party rights of action which the University may have against the City.

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- 23.4. Delivery of Certificates: The University shall deliver or cause to be delivered promptly to the City, and to the United States at the address shown below, a certificate of insurance evidencing the insurance required by this Sublease and shall also deliver no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks. When relevant, certification of the University's self-insurance coverage shall satisfy the requirements of this Sublease. In addition, the University shall deliver or cause to be delivered the face sheets from contractors' insurance policies required under this section, including the additional insured endorsement (CG2026).

United States of America  
Commanding Officer  
Engineering Field Activity, Northwest (Code 24)  
Naval Facilities Engineering Command  
19917 7th Avenue NE  
Poulsbo, WA 98370-7570

- 23.5. Contractors' Bonds: The University shall require each contractor employed by it to perform any demolition or construction work on or to the Premises to secure and maintain, at no cost to the City, a performance and payment bond with a dual obligee rider, payable to the University and the City in the total amount of the contract. Said bond shall be conditioned on the faithful performance of all of the provisions of the contract by the contractor, or the surety if so required, and for the payment of all laborers, mechanics, subcontractors and material suppliers, and all persons who supply such person or persons or subcontractors with provisions or supplies for the carrying on of such work. Each such bond shall be provided to the City's Risk Manager within ten days of the award of the contract and in any event prior to commencement of any work. Each such bond shall be issued by a properly licensed surety company acceptable to the City's Risk Manager and shall be on a form acceptable to the City Attorney.

## 24. DEFAULT AND TERMINATION.

- 24.1. Default; Cure Periods; Termination: In the event the City is notified by the United States of its intent to terminate the Master Lease in accordance with subparagraph 6.a thereof, the City shall give a copy of such notice to the University at the address shown below within 48 hours of the City's receipt thereof, and the University shall be bound by and shall comply with all obligations of the City contained in the notice and in the Master Lease, and this Sublease shall terminate on the date set forth in such notice. In addition, the University's failure to comply with any term or provision of this Sublease shall be a default, and if either

(a) such default shall continue, after notice from the City specifically identifying the nature of the default, for a period of thirty (30) days, or such longer period as

(i) may be specified by another applicable Section of this Sublease, or

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(ii) may be reasonably required to cure the default, if the University commences cure within said thirty day period and covenants to diligently complete same within a total period of 120 days,

or

(b) there shall have been two or more other defaults of a similar nature within the previous one-year period, of which notice shall have been given to the University (whether or not such defaults shall have been cured),

then the City shall have the right, at the City's option, to terminate this Sublease or any extension of it, as well as all right, title and interest of the University thereunder by giving the University at least ninety (90) days notice in writing of said termination. Upon the expiration of the date and time fixed in the notice of termination, all right, title and interest of the University under this Sublease, and unless otherwise directed by the City all rights of the University, shall wholly cease and expire. The University shall then immediately surrender to the City the Premises and all improvements and Personal Property, as more fully set forth in Article 28.

24.2. Remedies Cumulative: The remedies under this Article 24 are in addition to, and not in limitation of, any other remedies provided in this Sublease.

## **25. SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS OF WAY.**

This Sublease is subject to all outstanding easements and rights of way identified on Exhibit A of the Master Lease for location of any type of facility over, across, in and upon the Premises, or any portion thereof, and to the right of the United States and of the City to grant such additional easements and rights of way over, across, in and upon the Premises as they shall determine to be in the public interest; provided, that any such additional easement or right of way shall be conditioned on the assumption by the grantee thereof of liability to the University for such damages as the University shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such easements and rights of way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located thereon pursuant to the terms of such easements, and to any Federal, State or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

## **26. RIGHTS RESERVED BY CITY.**

The City reserves for itself, its officers, employees, agents and contractors, free access to the Premises, including the Building thereon, at all reasonable times, for purpose of inspecting, cleaning, or making repairs, additions or alterations to the Premises or any other property owned by or under the control of the City, but this right shall not be construed as an agreement on the part of the City to make inspections, clean or make repairs, additions or alterations. In addition, the City expressly reserves the following rights:

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- (a) To construct, install, maintain, use, and/or modify -- across, under and over the Premises -- streets, roads, sidewalks, bicycle paths, utility lines and poles, and facilities of all kinds related to any of the foregoing.
- (b) To install, maintain, remove, or modify all landscaping, trees, shrubs, signs, fences, and accessory structures of any kind.

The rights reserved hereunder may be transferred by the City wholly or in part to any private or public parties, whether or not in connection with the transfer of a fee interest in the Premises or any part thereof, and shall be exercised in such manner as does not unreasonably interfere with the University's access to and use of the Building on the Premises.

## **27. SUBLEASES AND ASSIGNMENTS.**

The University shall not enter into any sublease of the Premises or any portion thereof or any assignment of any interest in this Sublease, whether long- or short-term in nature, without the written consent of the City and of the United States, consistent with paragraph 26 of the Master Lease.

## **28. SURRENDER.**

Upon the expiration of this Sublease or its prior termination, the University shall surrender the Premises, including all improvements, alterations, changes and additions thereto, in as good a condition as existed at the time the Joint Inspection Report was made. If so requested by the City, the University shall convey to the City by special warranty deed all improvements, subject only to such encumbrances and subleases as shall have been specifically approved in writing by the City and the United States. On or before such date the University shall deliver to the City (a) all keys to any structures, fixtures or Personal Property on the Premises; (b) all plans, blueprints, surveys, diagrams, subleases, contracts and documents relating to the Premises or the improvements; and (c) all security deposits, prepaid rent and any other deposits from sublessees still in possession (but nothing herein shall be construed as the City's consent to any such continued possession), and the balances in reserve accounts maintained for the Premises or improvements pursuant to any grant agreement, loan documents, or other financing or subsidy arrangements for the Premises or any improvements. The University, on or before said termination date, shall remove from the Premises all of the University's personal property other than Personal Property as defined in Article 1 hereof. All property not removed by the University shall be deemed to have been abandoned by the University and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to the University and without obligation to account therefor. If the Sublease shall be terminated as to a portion of the Premises then this Article shall apply to such portion and all improvements thereon, together with all related Personal Property.

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